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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,727	07/01/2003	Kim Davis	J25-960 US	6135
21706	7590	04/16/2004	EXAMINER	
NOTARO AND MICHALOS 100 DUTCH HILL ROAD SUITE 110 ORANGEBURG, NY 10962-2100			HOGE, GARY CHAPMAN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/611,727

Applicant(s)

DAVIS ET AL.

Examiner

Gary C Hoge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-20 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08/21/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 2, 5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertel in view of Stewart.

It appears that applicant intends claim 1 to be a subcombination claim directed only toward the tag and the band, but not the item. See claim 11. However, the language in claim 1 is so specific as to the attachment and location of the band and the tag on the item, that the item has clearly been positively recited, applicants' intentions notwithstanding. Therefore, claim 1 and its dependents have been treated as combination claims.

Regarding claims 1 and 12, Bertel discloses a plurality of stacked soft-goods (in this case, cotton bales), each item having relatively broad upper and lower surface and relatively narrow

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edge surfaces. However, the cotton bales disclosed by Bertel do not include a band and a tag. Stewart teaches that it was known in the art to provide a cotton bale with a plurality of bands **B** to hold the bale together, and a tag **A** to identify the bale. The tag has a pair of slots **7** spaced from each other and defining an information carrying portion **4** therebetween and a pair of straps **5** extending along each slot. The tag is threaded on the band, which extends through both of the slots, and the tag is positioned on an edge surface of the bale. Information concerning the bale is located on the information carrying portion **4**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cotton bales disclosed by Bertel with bands and tags, as taught by Stewart, in order to hold the bale together and to identify the bale, respectively.

Regarding claims 9 and 10, see Fig. 1 of Stewart. The transverse bands can be described as "ribbons" (claim 9) or "belts" (claim 10).

Regarding claim 11, the item disclosed by Bertel displayed in a stack of items. Further, the item (a cotton bale), when modified according to Stewart, includes a cover that has several fold lines.

Regarding claims 13-20, these claims purport to be method claims, but they contain only structural limitations that do not affect the claimed method. These structural limitations have not been given patentable weight.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertel in view of Stewart as applied to claim 5 above, and further in view of Jeffers.

It is not known whether the letters disclosed by Stewart are raised (i.e., embossed). However, it is well known in the art to emboss identification tags, as demonstrated by Jeffers, in

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order to make sure that the information presented on the tags cannot be easily obliterated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to emboss the letters on the tag disclosed by Bertel, as modified by Stewart, as taught by Jeffers, in order to prevent the letters from being easily obliterated.

***Allowable Subject Matter***

5. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C Hoge whose telephone number is (703) 308-3422. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary C Hoge  
Primary Examiner  
Art Unit 3611

gch